

105TH CONGRESS  
1ST SESSION

# S. 1256

To simplify and expedite access to the Federal courts for injured parties whose rights and privileges, secured by the United States Constitution, have been deprived by final actions of Federal agencies, or other government officials or entities acting under color of State law; to prevent Federal courts from abstaining from exercising Federal jurisdiction in actions in which no State law claim is alleged; to permit certification of unsettled State law questions that are essential to Federal claims arising under the Constitution; to allow for efficient adjudication of constitutional claims brought by injured parties in the United States district courts and the Court of Federal Claims; to clarify when government action is sufficiently final to ripen certain Federal claims arising under the Constitution; and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 6, 1997

Mr. HATCH (for himself, Mr. REID, Mr. COVERDELL, Mr. THURMOND, Mr. GRAMM, and Mr. BURNS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To simplify and expedite access to the Federal courts for injured parties whose rights and privileges, secured by the United States Constitution, have been deprived by final actions of Federal agencies, or other government officials or entities acting under color of State law; to prevent Federal courts from abstaining from exercising Federal jurisdiction in actions in which no State law claim is alleged; to permit certification of unsettled State law questions that are essential to Federal claims arising

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under the Constitution; to allow for efficient adjudication of constitutional claims brought by injured parties in the United States district courts and the Court of Federal Claims; to clarify when government action is sufficiently final to ripen certain Federal claims arising under the Constitution; and for other purposes.

1        *Be it enacted by the Senate and House of Representa-*  
 2        *tives of the United States of America in Congress assembled,*

3        **SECTION 1. SHORT TITLE.**

4        This Act may be cited as the “Citizens Access to Jus-  
 5        tice Act of 1997”.

6        **SEC. 2. FINDINGS.**

7        Congress finds that—

8                (1) property rights have been abrogated by the  
 9                application of laws, regulations, and other actions by  
 10              all levels of government that adversely affect the  
 11              value and the ability to make reasonable use of pri-  
 12              vate property;

13              (2) certain provisions of sections 1346 and  
 14              1402 and chapter 91 of title 28, United States Code  
 15              (commonly known as the Tucker Act), that delineate  
 16              the jurisdiction of courts hearing property rights  
 17              claims, frustrate the ability of a property owner to  
 18              obtain full relief for violation founded upon the fifth  
 19              and fourteenth amendments of the United States  
 20              Constitution;

1 (3) current law—

2 (A) has no sound basis for splitting juris-  
3 diction between two courts in cases where con-  
4 stitutionally protected property rights are at  
5 stake;

6 (B) adds to the complexity and cost of  
7 takings and litigation, adversely affecting tax-  
8 payers and property owners;

9 (C) forces a property owner, who seeks  
10 just compensation from the Federal Govern-  
11 ment, to elect between equitable relief in the  
12 district court and monetary relief (the value of  
13 the property taken) in the United States Court  
14 of Federal Claims;

15 (D) is used to urge dismissal in the district  
16 court in complaints against the Federal Govern-  
17 ment, on the ground that the plaintiff should  
18 seek just compensation in the Court of Federal  
19 Claims;

20 (E) is used to urge dismissal in the Court  
21 of Federal Claims in complaints against the  
22 Federal Government, on the ground that the  
23 plaintiff should seek equitable relief in district  
24 court; and

1 (F) forces a property owner to first pay to  
2 litigate an action in a State court, before a  
3 Federal judge can decide whether local govern-  
4 ment has denied property rights safeguarded by  
5 the United States Constitution;

6 (4) property owners cannot fully vindicate prop-  
7 erty rights in one lawsuit and their claims may be  
8 time barred in a subsequent action;

9 (5) property owners should be able to fully re-  
10 cover for a taking of their private property in one  
11 court;

12 (6) certain provisions of section 1346 and 1402  
13 and chapter 91 of title 28, United States Code (com-  
14 monly known as the Tucker Act) should be amend-  
15 ed, giving both the district courts of the United  
16 States and the Court of Federal Claims jurisdiction  
17 to hear all claims relating to property rights in com-  
18 plaints against the Federal Government;

19 (7) section 1500 of title 28, United States  
20 Code, which denies the Court of Federal Claims ju-  
21 risdiction to entertain a suit which is pending in an-  
22 other court and made by the same plaintiff, should  
23 be repealed;

24 (8) Federal and local authorities, through com-  
25 plex, costly, repetitive and unconstitutional permit-

1       ting, variance, and licensing procedures, have denied  
2       property owners their fifth and fourteenth amend-  
3       ment rights under the United States Constitution to  
4       the use, enjoyment, and disposition of, and exclusion  
5       of others from, their property, and to safeguard  
6       those rights, there is a need to determine what con-  
7       stitutes a final decision of an agency in order to  
8       allow claimants the ability to protect their property  
9       rights in a court of law;

10       (9) a Federal judge should decide the merits of  
11       cases where a property owner seeks redress solely for  
12       infringements of rights safeguarded by the United  
13       States Constitution, and where no claim of a viola-  
14       tion of State law is alleged; and

15       (10) certain provisions of sections 1343, 1346,  
16       and 1491 of title 28, United States Code, should be  
17       amended to clarify when a claim for redress of con-  
18       stitutionally protected property rights is sufficiently  
19       ripe so a Federal judge may decide the merits of the  
20       allegations.

21   **SEC. 3. PURPOSES.**

22       The purposes of this Act are to—

23       (1) establish a clear, uniform, and efficient ju-  
24       dicial process whereby aggrieved property owners  
25       can obtain vindication of property rights guaranteed

1 by the fifth and fourteenth amendments to the  
2 United States Constitution and this Act;

3 (2) amend the Tucker Act, including the repeal  
4 of section 1500 of title 28, United States Code;

5 (3) rectify the unduly onerous and expensive re-  
6 quirement that a property owner, seeking redress  
7 under section 1979 of the Revised Statutes of the  
8 United States (42 U.S.C. 1983) for the infringement  
9 of property rights protected by the fifth and four-  
10 teenth amendments of the United States Constitu-  
11 tion, is required to first litigate Federal constitu-  
12 tional issues in a State court before obtaining access  
13 to the Federal courts; and

14 (4) provide for uniformity in the application of  
15 the ripeness doctrine in cases where constitutionally  
16 protected property rights are allegedly infringed, by  
17 providing that a final agency decision may be adju-  
18 dicated by a Federal court on the merits after—

19 (A) the pertinent government body denies  
20 a meaningful application to develop the land in  
21 question; and

22 (B) the property owner seeks a waiver by  
23 or brings an appeal to an administrative agency  
24 from such denial.

1 **SEC. 4. DEFINITIONS.**

2 In this Act, the term—

3 (1) “agency action” means any action, inaction,  
4 or decision taken by a Federal agency or other gov-  
5 ernment agency that at the time of such action, in-  
6 action, or decision adversely affects private property  
7 rights;

8 (2) “district court”—

9 (A) means a district court of the United  
10 States with appropriate jurisdiction; and

11 (B) includes the United States District  
12 Court of Guam, the United States District  
13 Court of the Virgin Islands, or the District  
14 Court for the Northern Mariana Islands;

15 (3) “Federal agency” means a department,  
16 agency, independent agency, or instrumentality of  
17 the United States, including any military depart-  
18 ment, Government corporation, Government-con-  
19 trolled corporation, or other establishment in the ex-  
20 ecutive branch of the United States Government;

21 (4) “owner” means the owner or possessor of  
22 property or rights in property at the time the taking  
23 occurs, including when—

24 (A) the statute, regulation, rule, order,  
25 guideline, policy, or action is passed or promul-  
26 gated; or

1 (B) the permit, license, authorization, or  
2 governmental permission is denied or sus-  
3 pended;

4 (5) “private property” or “property” means all  
5 interests constituting property, as defined by Fed-  
6 eral or State law, protected under the fifth and four-  
7 teenth amendments to the United States Constitu-  
8 tion; and

9 (6) “taking of private property”, “taking”, or  
10 “take” means any action whereby restricting the  
11 ownership, alienability, possession, or use of private  
12 property is an object of that action and is taken so  
13 as to require compensation under the fifth amend-  
14 ment to the United States Constitution, including by  
15 physical invasion, regulation, exaction, condition, or  
16 other means.

17 **SEC. 5. PRIVATE PROPERTY ACTIONS.**

18 (a) IN GENERAL.—An owner may file a civil action  
19 under this section to challenge the validity of any Federal  
20 agency action that adversely affects the owner’s interest  
21 in private property in a district court or the United States  
22 Court of Federal Claims.

23 (b) CONCURRENT JURISDICTION.—Notwithstanding  
24 any other provision of law and notwithstanding the issues  
25 involved, the relief sought, or the amount in controversy,



1 the district court and the United States Court of Federal  
2 Claims shall each have concurrent jurisdiction over both  
3 claims for monetary relief and claims seeking invalidation  
4 of any Act of Congress or any regulation of a Federal  
5 agency affecting private property rights.

6 (c) ELECTION.—The plaintiff may elect to file an ac-  
7 tion under this section in a district court or the United  
8 States Court of Federal Claims.

9 (d) WAIVER OF SOVEREIGN IMMUNITY.—This section  
10 constitutes express waiver of the sovereign immunity of  
11 the United States with respect to an action filed under  
12 this section.

13 **SEC. 6. STANDING AND EXHAUSTION OF REMEDIES.**

14 (a) IN GENERAL.—Subject to subsection (b), any  
15 person adversely affected by a Federal agency action shall  
16 have standing to challenge and seek judicial review of that  
17 action without first exhausting administrative remedies.

18 (b) ADJUDICATION.—

19 (1) IN GENERAL.—Any civil action filed under  
20 section 5 shall be ripe for adjudication upon a final  
21 decision rendered by the United States, that causes  
22 actual and concrete injury to the party seeking re-  
23 dress.

24 (2) FINAL DECISION.—

1 (A) IN GENERAL.—For purposes of this  
2 subsection, a final decision exists if—

3 (i) the United States, acting under  
4 Federal statute or regulation, makes a de-  
5 finitive decision regarding the extent of  
6 permissible land uses on the property that  
7 has allegedly been infringed or taken, with-  
8 out regard to any uses that may be per-  
9 mitted elsewhere; and

10 (ii)(I) one meaningful application to  
11 use the property has been submitted for a  
12 final decision but is denied; and

13 (II) if the pertinent Federal statute or  
14 regulation provides for a right of appeal to  
15 or waiver by the pertinent Federal agency  
16 from the final decision regarding such  
17 property, the party seeking redress has  
18 brought 1 appeal or sought 1 waiver from  
19 such a final decision.

20 (B) APPEAL OR WAIVER.—For purposes of  
21 subparagraph (A)(ii), the party seeking redress  
22 shall not be required to apply for such an ap-  
23 peal or waiver if—

24 (i) no such process is available;

1 (ii) it cannot provide the relief re-  
 2 quested; or

3 (iii) the prospects for success are rea-  
 4 sonably unlikely and intervention by the  
 5 district court or the United States Court of  
 6 Federal Claims under this section is war-  
 7 ranted to decide the merits.

8 **SEC. 7. APPEALS.**

9 The United States Court of Appeals for the Federal  
 10 Circuit shall have exclusive jurisdiction of any action filed  
 11 under section 5, regardless of whether the jurisdiction of  
 12 such action is based in whole or part under such section.

13 **SEC. 8. JURISDICTION OF UNITED STATES COURT OF FED-**  
 14 **ERAL CLAIMS AND UNITED STATES DISTRICT**  
 15 **COURTS.**

16 (a) UNITED STATES COURT OF FEDERAL CLAIMS.—

17 (1) JURISDICTION.—Section 1491(a) of title  
 18 28, United States Code, is amended—

19 (A) in paragraph (1) by amending the first  
 20 sentence to read as follows: “The United States  
 21 Court of Federal Claims shall have jurisdiction  
 22 to render judgment upon any claim against the  
 23 United States for monetary relief founded ei-  
 24 ther upon the Constitution or any Act of Con-  
 25 gress or any regulation of an executive depart-

1           ment or upon any express or implied contract  
2           with the United States, in cases not sounding  
3           in tort, or for invalidation of any Act of Con-  
4           gress or any regulation of an executive depart-  
5           ment under section 5 of the Citizens Access to  
6           Justice Act of 1997.”;

7           (B) in paragraph (2) by inserting before  
8           the first sentence the following: “In any case  
9           within its jurisdiction, the Court of Federal  
10          Claims shall have the power to grant injunctive  
11          and declaratory relief when appropriate.”; and

12          (C) by adding at the end the following new  
13          paragraphs:

14          “(3) In cases otherwise within its jurisdiction,  
15          the Court of Federal Claims shall also have supple-  
16          mental jurisdiction, concurrent with the courts des-  
17          ignated under section 1346(b), to render judgment  
18          upon any related tort claim authorized under section  
19          2674.

20          “(4) In proceedings within the jurisdiction of  
21          the Court of Federal Claims which constitute judi-  
22          cial review of agency action (rather than de novo  
23          proceedings), the provisions of section 706 of title 5  
24          shall apply.”.

1           (2) PENDING OF CLAIMS IN OTHER  
2       COURTS.—

3           (A) IN GENERAL.—Section 1500 of title  
4       28, United States Code is repealed.

5           (B) TECHNICAL AND CONFORMING AMEND-  
6       MENT.—The table of sections for chapter 91 of  
7       title 28, United States Code, is amended by  
8       striking out the item relating to section 1500.

9       (b) DISTRICT COURT JURISDICTION.—Section  
10   1346(a) of title 28, United States Code, is amended by  
11   adding after paragraph (2) the following:

12           “(3) Any civil action filed under section 5 of the  
13   Citizens Access to Justice Act of 1997.”.

14       (c) DISTRICT COURT CIVIL RIGHTS JURISDICTION;  
15   ABSTENTION.—Section 1343 of title 28, United States  
16   Code, is amended—

17           (1) by redesignating subsection (b) as sub-  
18       section (e); and

19           (2) by inserting after subsection (a) the follow-  
20       ing new subsections:

21           “(b)(1) Any claim or action brought under section  
22   1979 of the Revised Statutes (42 U.S.C. 1983) to redress  
23   the deprivation of a property right or privilege secured by  
24   the Constitution shall be ripe for adjudication by the dis-  
25   trict courts upon a final decision by any person acting

1 under color of any statute, ordinance, regulation, custom,  
 2 or usage of any State or territory of the United States,  
 3 that causes actual and concrete injury to the party seeking  
 4 redress.

5 “(2)(A) For purposes of this subsection, a final deci-  
 6 sion exists if—

7 “(i) any person acting under color of any stat-  
 8 ute, ordinance, regulation, custom, or usage, of any  
 9 State or territory of the United States, makes a de-  
 10 finitive decision regarding the extent of permissible  
 11 uses on the property that has been allegedly in-  
 12 fringed or taken, without regard to any uses that  
 13 may be permitted elsewhere; and

14 “(ii)(I) one meaningful application to use the  
 15 property has been submitted but is denied; and

16 “(II) if the applicable statute, ordinance, regu-  
 17 lation, custom, or usage provides for a right of ap-  
 18 peal to or waiver by an administrative agency from  
 19 the final decision regarding the property, the party  
 20 seeking redress has brought 1 appeal or sought 1  
 21 waiver from such a final decision.

22 “(B) For purposes of subparagraph (A)(ii), the party  
 23 seeking redress shall not be required to apply for such an  
 24 appeal or waiver if—

25 “(i) no such process is available;

1           “(ii) it cannot provide the relief requested; or

2           “(iii) the prospects of success are reasonably  
3       unlikely and intervention by the United States Dis-  
4       trict Court is warranted to decide the merits.

5       “(C) For purposes of this subsection, a ‘final deci-  
6       sion’ for a ripe claim under section 1979 of the Revised  
7       Statutes (42 U.S.C. 1983) shall not require the party  
8       seeking redress to exhaust judicial remedies provided by  
9       any State or Territory.

10       “(c) Whenever a district court exercises jurisdiction  
11       under subsection (a), in an action where the operative  
12       facts concern the uses of real property, it shall not abstain  
13       from exercising or relinquish its jurisdiction to a State  
14       court in an action where no claim of a violation of a State  
15       law, right, or privilege is alleged, and where a parallel pro-  
16       ceeding in State court arising out of the same operative  
17       facts as the district court proceeding is not pending.

18       “(d) Where the district court has jurisdiction over an  
19       action under subsection (a), where the operative facts con-  
20       cern the uses of real property, that cannot be decided  
21       without resolution of a significant but unsettled question  
22       of State law, the district court may certify the question  
23       of State law to the highest appellate court of that State.  
24       After the State appellate court resolves the question cer-  
25       tified to it, the district court shall proceed with resolving

1 the merits. The district court shall not certify a question  
2 of State law under this subsection unless the question of  
3 State law—

4 “(1) will significantly affect the merits of the  
5 injured party’s Federal claim; and

6 “(2) is so unclear and obviously susceptible to  
7 a limiting construction as to render premature a de-  
8 cision on the merits of the constitutional or legal  
9 issue in the case.”.

10 **SEC. 9. STATUTE OF LIMITATIONS.**

11 The statute of limitations for any action filed under  
12 section 5 shall be 6 years from the date of the taking of  
13 private property.

14 **SEC. 10. ATTORNEY’S FEES AND COSTS.**

15 The court, in issuing any final order in any action  
16 filed under section 5, shall award costs of litigation (in-  
17 cluding reasonable attorney and expert witness fees) to  
18 any prevailing plaintiff.

19 **SEC. 11. RULES OF CONSTRUCTION.**

20 Nothing in this Act shall be construed to interfere  
21 with the authority of any State to create additional prop-  
22 erty rights.



1 **SEC. 12. EFFECTIVE DATE.**

2       This Act shall take effect on the date of enactment  
3 of this Act and shall apply to any agency action that oc-  
4 curs on or after such date.

